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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,102	02/23/2006	Roelof Marissen	4662-55	7740

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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER	
CUMBERLEDGE, JERRY L	
ART UNIT	PAPER NUMBER
3733	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/544,102	MARISSEN ET AL.	
	Examiner	Art Unit	
	Jerry Cumberledge	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 August 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bonutti et al. (US Pat. 7,094,251 B2).

Bonutti et al. disclose a bone fixing device comprising a surgical cable (Fig. 22, ref. 36f) having a first end (Fig. 22, ref. 34f) and a second end (Fig. 22, ref. 32f), and at least a first fixing plate (Fig. 22, ref. 48f) and a second fixing plate (Fig. 22, ref. 46f) respectively having first and second central holes (Fig. 22, refs. 396 and 386) and second rings (Fig. 22, the portions of the plate surrounding the first and second holes) surrounding said first and second holes, wherein each of the first and second fixing plates have an outer edge (Fig. 22, outer edges of plates) defining an outer circumference thereof and an inner edge (Fig. 22, the internal sidewalls and edges of the sidewalls that form the holes of the plates) defining a respective one of the first and second central holes, the second fixing plate being positionable into contact with a bone part to be fixed and the first fixing plate being in a stacked position on top of the second fixing plate when positioned against the bone part to be fixed so as to establish a gap

(Fig. 22, space between the plates) therebetween such that the first and second central holes overlap each other (Fig. 22), wherein each of the first and second ends of the cable is connected to the first and second fixing plates (Fig. 22, connected by the wrapping of the cable around portions of the plates) and wherein at least one of the first and second ends of the cable is connected to the first and second fixing plates (Fig. 22, connected by the wrapping of the cable around portions of the plates), and wherein at least one of the first and second ends of the cable follows a continuous trajectory running from outside the outer edges underneath the second ring and up to the second hole, the at least one end of the cable thereafter bending upward into a first upward trajectory part (portion of cable near Fig. 22, ref. 390) through the second and the first holes, respectively, bending to an outward trajectory part (portion of cable near Fig. 22, block near ref. 46f) running across the first ring a direction from its inner edge toward its outer edge, bending to a downward trajectory part (portion of cable near Fig. 22, ref. 402) outside at least the outer edge first ring running in a direction opposite to the first upward trajectory part, bending to an inner trajectory part (portion of cable near Fig. 22, unlabeled block between ref. 396 and 386) running through the second central hole of the second ring, wherein the inner trajectory part includes one and other ends, the one end thereof being connected to a first radial trajectory part (portion of cable near Fig. 22, ref. 400) running through the gap established between the first and second fixing plates and the other end thereof being connected to a second radial trajectory part running underneath the second ring (portion of cable near Fig. 22, ref. 398). Furthermore, with regard to the trajectory of the cable, Bonutti et al. state in column 1, lines 56-58, that the

"present invention includes a plurality of different features which may be utilized in combination with each other or separately." As such, the drawings of Figs. 22 and 23 are particularly relevant, since the cable is shown being wrapped around trajectory parts of the first and second plates. These wrappings of the cable can both be applied in the device shown in Fig. 22, which would then include the cable being wrapped around the trajectory parts in the device of Fig. 22.

Bonutti et al. further disclose the downward part further runs outside the outer edge of the second ring and is connected to the other end of the inner part through the second trajectory part running underneath the second ring from its outer edge to the second central hole, and wherein the one end of the inner part is immediately connected to the first trajectory part running through the gap established between the first and second fixing plates in an outward direction and ending outside the plates as a cable end (Fig. 22). The first upward, the outward, the downward, the first radial trajectory part which runs underneath the second ring in a direction from the second central hole to the outer edge thereof and ends outside the first and second fixing plates as a cable (Fig. 22). Each of the first and second ends of the cable follow the continuous trajectory (Fig. 22). The device further comprises a tensioning device (Fig. 10, ref. 172)(column 11, lines 44-46) connected to the first and the second fixing rings, wherein the other of the first and second ends of the cable is fixed to the tensioning device.

Bonutti et al. disclose a method comprising the sequential steps of positioning a bone fixing device according to claim 1 relative to the bone parts to be fixed (Fig.

1)(column 29, lines 13-18) such that the second fixing plate is positioned in contact with the bone parts to be fixed (column 3, lines 29-34) and the first fixing plate is in a stacked position on top of the second fixing plate (Fig. 1), followed by drawing the first and second ends of the cable to tension the cable around the bone parts to the tension required to fix the bone parts (column 29, lines 57-67). The method further comprises inserting a bar between the first and second fixing plates before the cable is tensioned and thereafter removing the bar after the cable has been tensioned (Fig. 8).

Bonutti et al. disclose a method for fixing bone parts comprising the steps of applying a bone fixing device according to claim 5 around the bone parts to be fixed, followed by drawing said one end of the cable to tension the cable around the bone and then tensioning the cable to the tension required to fix the bone parts by means of the tensioning device (column 29, lines 57-67).

Bonutti et al. disclose a set of at least two fixing plates (Fig. 22, ref. 46f)(Fig. 22, ref. 48f) and a surgical cable (Fig. 22, ref. 36f) fitted for constructing a bone fixing device according to claim 1. Fixing plate (Fig. 22, ref. 46f) prepared for application in a bone fixing device according to claim 1. Surgical cable (Fig. 22, ref. 36f) prepared for application in a bone fixing device according to claim 1. Set of at least two fixing plates (Fig. 22, ref. 46f)(Fig. 22, ref. 48f) and a surgical cable (Fig. 22, ref. 36f) prepared for application in the method of claim 6. Fixing plate (Fig. 22, ref. 46f) prepared for application in the method of claim 6. Surgical cable (Fig. 22, ref. 36f) prepared for application in the method of claim 6.

The first and second holes each encompass a center of the first and second rings, respectively (Figs. 22 and 23)(Fig. 19). The first and second rings correspond to a center of the first and second central holes, respectively (Fig. 22). The first and second holes are circular, oval, square, rectangular or other regular shape (Figs. 22 and Fig. 23).

With regard to statements of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over the device of Bonutti et al., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. Kalman v. Kimberly Clark Corp., 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Response to Arguments

Applicant's arguments filed 08/28/2007 have been fully considered but they are not persuasive.

With regard to the examiner's interpretation of the trajectory parts, it is noted that the portions of the surgical cable of Bonutti that correspond to the portions of the Bonutti plates which the examiner previously indicated as the trajectory parts can be considered to be trajectory parts of the device.

With regard to Applicant's argument that the "other end" is not connected to a second radial trajectory part running underneath the second ring, the examiner respectfully disagrees. The portion of the cable near ref. 232 f is radial in that it loops around a portion of the device and it extends underneath the second ring. Inverting Fig. 22 as shown in the marked up drawing created by the Examiner shows that the radial trajectory part is below or underneath the second ring.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Cumberledge whose telephone number is (571) 272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLC

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER